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10/751,359

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Richard C. Wilmoth

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EXAMINER

BOLES, DEREK

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/751,359
Filing Date: January 05, 2004
Appellant(s): WILMOTH, RICHARD C.

MAILED
AUG 13 2007
GROUP 3700

George Kobler
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/23/07 appealing from the Office action mailed 1/12/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Whether claims 1-3, 5-7, 11 and 14, 15 under 35 U.S.C. 103(a) are obvious over Gies et al. (5,355,910) in view of Klomhaus et al. (5,194,038). Whether claim 16 is obvious over Gies et al. (5,355,910) in view of Klomhaus et al. (5,194,038) and in further view of Barton (6,210,266). Whether claim 10 is obvious over Gies et al. (5,355,910) in view of Klomhaus et al. (5,194,038) and in further view of Oppermann et al. (6,609,535).

(7) Claims Appendix

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The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim(s) 1-3, 5-7, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gies et al. (5,355,910) in view of Klomhaus et al. (5,194,038). Gies et al. discloses all of the limitations of the claim(s) except for the relatively rigid layer operates to close the sealing flap irrespective of the pressure relief valve's orientation with respect to gravity. Klomhaus et al. discloses the presence of a relatively rigid layer operating to close the sealing flap irrespective of the pressure relief valve's orientation with respect to gravity. See fig. 1 of Gies et al. and abstract of Klomhaus et al. for the spring action of the flap. Hence, one skilled in the art would find it obvious to modify the system of Gies et al. to include the relatively rigid layer operating to close the sealing flap irrespective of the pressure relief valve's orientation with respect to gravity of Klomhaus et al. for the purpose of better flap performance in various situations. Regarding claim 2, see col. 3, lines 66-68 of Gies et al. Regarding claim 3, see element **30a** of Gies et al. Regarding claims 5-7, 14 and 15 see element **20** of Gies et al.

Claim(s) 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gies et al. in view of Klomhaus et al. and in further view of Barton (6,210,266). Gies et al. in view of Klomhaus et al. discloses all of the limitations of the claim(s) except for sealing the flap to the support by heat staking. Barton discloses the presence of sealing the flap to the support by heat staking. See col. 4, line 63 to col. 5, line 5. Hence, one skilled in the art would find it obvious to

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modify the system of Gies et al. in view of Klomhaus et al. to include sealing the flap to the support by heat staking of Barton for the purpose of ease of manufacture.

Claim(s) 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gies et al. in view of Klomhaus et al. and in further view of Oppermann et al. (6,609,535). Gies et al. in view of Klomhaus et al. discloses all of the limitations of the claim(s) except for the rigid layer being a comb. Oppermann et al. discloses the presence of a rigid layer being a comb. See fig. 4. Hence, one skilled in the art would find it obvious to modify the system of Gies et al. in view of Klomhaus et al. to include a rigid layer being a comb of Oppermann et al. for the purpose of a more complete seal.

(10) Response to Argument

Response to appellant's assertion that there is no suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The '038 patent was combined with the '910 patent to show how obvious it is to have an exhaust valve that operates irrespective of gravity due to the well known and recited (abstract) spring action of an integrally molded exhaust valve. Further the '038 valve apparently has some degree of rigidity so as to be elastically loaded. Although, the '910 patent's flap is primarily

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closed by the additional weight of elements 40 and 40' it is clear that it would be advantageous for the '910 patent to take advantage of the '038 patent's spring action. As suggested in the '038 patent at col. 1, lines 40-44, the elastic loading provides tension to prevent ingress of unwanted air. Therefore, this recitation is the suggestion to combine the two prior arts because in the case of the '910 patent if there is the occasion of a surge of wind or a blast of water from driving over a puddle, the surge or blast may overcome the closing weight of the '910 patent's flap. However, with the additional tensioning of the '038 patent this unwanted ingress will be precluded, therefore providing motivation for this combination. In response to appellant's argument that its unclear as to how the prior arts could be combined due to their "wide differences", the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Response to appellant's assertion that the proposed combination changes the principle operation of the '910 patent.

In the aforementioned Board case that appellant relies upon, the proposed combination was from different inventions in disparate arts. In this case the two prior arts relied upon serve the same principle operation in the same field of endeavor i.e. to provide relief of overpressure in the cabin of an automobile. Therefore the combination of the two would not change either one's principle operation it would only enhance it. Further, the '910 patent contemplates and allows for combining with various materials and forms, see col. 4, lines 54-68. Clearly the '038 patent and its integrally molded spring action would fall into this scope since both prior arts are in the same

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field of endeavor and possess the exact same purpose. The '910 patent cursorily mentions the influence of gravity because it flows from the description of the valve orientation of being vertical, col. 3, lines 30-34. It is abundantly inherent that all valves in this particular orientation (including appellant's) would be affected by gravity. In fact, all but one of the appellant's own figures shows his valve being oriented in either the vertical or vertical and inclined sense and subject to the effects of gravity.

Response to appellant's assertion that the prior art references do not teach or suggest all of the claim limitations.

In this case, the '910 patent's valve discloses each and every structural feature of appellants claim 1. Specifically in fig. 2, see **12** for the housing, **22** for the sealing flap, **24** for the pliable layer oriented toward the intake and **40** for the rigid layer oriented toward the exhaust. Although, the '910 patent is non-integrated and includes a gap between rigid support members, this is not precluded by appellant's claim language. Further, applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., non-integrated) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

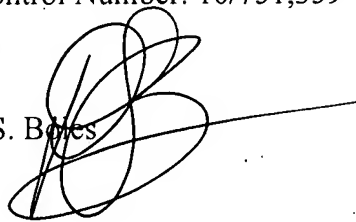
Respectfully submitted,

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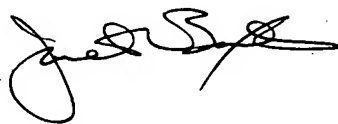
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Derek S. Boles

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Conferees:

Janet Baxter

A handwritten signature in black ink, featuring a series of connected loops and a long horizontal stroke.

Steve McAllister

A handwritten signature in black ink, appearing as a stylized 'SM' or similar initials.